

RECEIPT # 65621
AMOUNT \$ 250.00
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DEREK A. ANDRADE,
Plaintiff

v.

BRASHMODE, INC., and
CHRISTOPHER MARTINS,
Defendants

CIVIL ACTION NO.

05 - 11507 REK
Referred to MJ RBCollins

PLAINTIFF, DEREK A. ANDRADE, COMPLAINT AND JURY CLAIM

I. PARTIES

1. The Plaintiff, Derek A. Andrade (hereinafter "Andrade"), is an individual residing in Tampa, Florida.
2. The Defendant, Brashmode, Inc. (hereinafter "Brashmode" or the "Mahogany Grill"), is a corporation duly organized under the laws of the Commonwealth of Massachusetts, and maintains its principal place in Taunton, Bristol County, Massachusetts, and does business under the name of the Mahogany Grill.
3. The Defendant, Christopher Martins (hereinafter "Martins"), is an individual residing in Taunton, Bristol County, Massachusetts.

II. JURISDICTION

4. Jurisdiction on this matter is based upon 28 U.S.C. §1332, diversity of citizenship, as this action involves a dispute between citizens of different states, and the amount in controversy exceeds \$75,000.00.

III. GENERAL ALLEGATIONS

5. On or about August 3, 2002, during the evening, the Plaintiff Andrade and his girlfriend, Dorothy Hughes, were patrons at the Mahogany Grill, a bar room and tavern owned and operated by the Defendant Brashmode in Taunton, Massachusetts.
6. At approximately 11:30 P.M., the Defendant Martins and several other individuals arrived together at the Mahogany Grill.
7. At the time of their arrival at the Mahogany Grill, the Defendant Martins and the other individuals who accompanied him, were visibly intoxicated.
8. Shortly following his arrival, the Defendant Martins walked up behind Dorothy Hughes and began to push up against her, startling Ms. Hughes.
9. Upon observing the behavior of the Defendant Martins, the Plaintiff Andrade told the Defendant Martins not to touch Ms. Hughes and to move away from her.
10. A verbal argument then ensued between the Plaintiff Andrade and the Defendant Martins, which lasted for several minutes.
11. While the verbal argument was occurring, other individuals who were with the Defendant Martins came and stood next to him.
12. Following this verbal argument, the Defendant Martins and other members of his party went to the other side of the tavern, to an area where a pool table was located. For approximately the next ten to fifteen minutes, the Defendant Martins and others in his company glared at the Plaintiff Andrade.
13. Shortly thereafter, the Defendant Martins snuck up behind the Plaintiff Andrade, and, without warning, proceeded to strike the Plaintiff Andrade in his left eye

with a pool cue ball. The other individuals who were with the Defendant Martins, and whose identities are unknown to the Plaintiff Andrade, then joined in the Defendant Martins' attack upon the Plaintiff.

14. Employees of the Defendant Brashmode including, in particular, the tavern manager, Ann Wetterell, witnessed the loud and aggressive behavior of Defendant Martins, including his contact with Ms. Hughes, the ensuing verbal argument between the Plaintiff Andrade and the Defendant Martins, the threatening conduct of the Defendant Martins and the other individuals in his company toward the Plaintiff Andrade, and, finally, the beating of the Plaintiff Andrade by the Defendant Martins and the other individuals who were with him that night.
15. After observing the Defendant Martins make contact with Ms. Hughes, and then engage in a verbal argument with the Plaintiff Andrade, the tavern manager, Ann Wetterel, served the Defendant Martins and others in his party with alcoholic beverages.
16. In addition, after the Plaintiff Andrade was assaulted by the Defendant Martins, employees of the Defendant Brashmode, including, in particular, Ann Wetterell, ignored repeated requests by patrons at the tavern to call the Taunton police, and to call for medical assistance for the Plaintiff Andrade.
17. Notwithstanding these many observations, employees of the Defendant Brashmode failed to take any action whatsoever against the Defendant Martins and permitted the Defendant Martins and members of his party to remain on the premises even after their beating of the Plaintiff Andrade.

18. Following the incident, the Defendant Brashmode was directed by the Taunton Police Department to turn over a videotape which, upon information and belief, showed the beating of the Plaintiff by the Defendant Martins and the other individuals.
19. Notwithstanding the directive of the Taunton Police Department, the Defendant Brashmode destroyed the videotape.
20. As a result of the beating, as hereinbefore set forth, the Plaintiff Andrade sustained serious and permanent injuries, including, in particular, a ruptured globe and detached lens in his left eye, which have rendered him legally blind in that eye.

COUNT I

ANDRADE v. BRASHMODE, INC.
(Action for Negligence - Inadequate Security)

21. The Plaintiff Andrade repeats and realleges the allegations contained in paragraphs one through twenty as if fully restated herein.
22. On or about August 3, 2002, the Defendant Brashmode negligently failed to maintain adequate security to protect its patrons, including the Plaintiff Andrade, from the assaultive behavior of other patrons, including but not limited to, the Defendant Martins and the other members of his party. Said negligence includes, but is not limited to, the following:
 - (a) The Defendant Brashmode negligently failed to take any action against the Defendant Martins and members of his party while they engaged in abusive and aggressive behavior against patrons of the Mahogany Grill, including the Plaintiff Andrade and Dorothy Hughes;

(b) The Defendant Brashmode negligently permitted the Defendant Martins to have access to the pool cue ball that he used to strike the Plaintiff Andrade after the Defendant Martins had engaged in abusive and aggressive behavior against patrons of the Mahogany Grill, including the Plaintiff Andrade and Dorothy Hughes; and

(c) The Defendant Brashmode negligently failed to protect its patrons, including the Plaintiff Andrade, from abusive and aggressive behavior on the part of other patrons, including the Defendant Martins.

23. As a direct and proximate result of the negligence of the Defendant Brashmode, the Plaintiff Andrade sustained severe and permanent personal injuries and permanent scarring, was caused to be disabled and will be disabled in the future, was caused to incur and will continue to incur great medical and hospital expenses for said injuries, and was caused to sustain and will continue to sustain loss of income and earning capacity. The Plaintiff Andrade's ability to enjoy life and to attend to his usual activities has been damaged.

COUNT II

ANDRADE v. BRASHMODE, INC.

(Action for Negligence – Knowingly Serving An Intoxicated Person)

24. The Plaintiff Andrade repeats and realleges the allegations contained in paragraphs one through twenty three as if fully restated herein.
25. On or about August 3, 2002, the Defendant Brashmode knew, or should have known that several of its patrons including, in particular, the Defendant Martins and the members of his party, had ingested a significant amount of alcohol, both prior to and after their arrival upon the premises.

26. Despite said knowledge, and notwithstanding the observations made by employees of the Defendant Brashmode of the behavior of the Defendant Martins and the members of his party after their arrival upon the premises, the Defendant Brashmode negligently and knowingly served alcoholic beverages to the Defendant Martins and the members of his party, even though the Defendant Martins and the members of his party were exhibiting open and obvious signs of their intoxication.
27. As a result of the negligence of the Defendant Brashmode in serving alcoholic beverages to the Defendant Martins and the members of his party, said individuals became more intoxicated and more aggressive and combative towards other patrons, including, in particular, the Plaintiff Andrade.
28. The Defendant Martins and the members of his party, while in an intoxicated condition as the direct and proximate result of the negligent service of alcohol by the Defendant Brashmode, did assault and beat the Plaintiff Andrade and otherwise caused the Plaintiff Andrade serious and disabling personal injuries.
29. As a direct and proximate result of the negligence of the Defendant Brashmode, the Plaintiff Andrade sustained severe and permanent personal injuries and permanent scarring, was caused to be disabled and will be disabled in the future, was caused to incur and will continue to incur great medical and hospital expenses for said injuries, and was caused to sustain and will continue to sustain loss of income and earning capacity. The Plaintiff Andrade's ability to enjoy life and to attend to his usual activities has been damaged.

COUNT III
ANDRADE v. MARTINS
(Assault)

30. The Plaintiff, Derek A. Andrade, restates and incorporates by reference the allegations contained in paragraphs one through twenty nine as if fully restated herein.
31. The Defendant Martins did assault the Plaintiff Andrade, on or about August 3, 2002, and said assault was without justification, and without cause.
32. As a direct and proximate result of the assault on the Plaintiff was caused to undergo significant mental distress and suffered great humiliation and injury to his pride, reputation, and position in life.

COUNT IV
ANDRADE v. MARTINS
(Action for Battery)

33. The Plaintiff, Derek A. Andrade, restates and incorporates by reference the allegations contained in paragraphs one through thirty two as if fully restated herein.
34. The Defendant Martins did beat the Plaintiff Andrade on or about August 3, 2002, and did perpetrate battery upon him without justification and without cause.
35. As a direct and proximate result of the battery committed by the Defendant Martins, the Plaintiff Andrade sustained severe and permanent personal injuries and permanent scarring, was caused to be disabled and will be disabled in the future, was caused to incur and will continue to incur great medical and hospital expenses for said injuries, and was caused to sustain and will continue to sustain

loss of income and earning capacity. The Plaintiff Andrade's ability to enjoy life and to attend to his usual activities has been damaged.

PRAYERS FOR RELIEF

The Plaintiff, Derek A. Andrade, demands judgment as follows:

1. That, on the claims asserted in Count I of this Complaint, this Honorable Court enter judgment for the Plaintiff Andrade against the Defendant Brashmode, Inc., for the full amount of the damages caused to the Plaintiff Andrade, including interest and his costs incurred in bringing this action.
2. That, on the claims asserted in Count II of this Complaint, this Honorable Court enter judgment for the Plaintiff Andrade against the Defendant Brashmode, Inc., for the full amount of the damages caused to the Plaintiff Andrade, including interest and his costs incurred in bringing this action.
3. That, on the claims asserted in Count III of this Complaint, this Honorable Court enter judgment for the Plaintiff Andrade against the Defendant Martins for the full amount of the damages caused to the Plaintiff Andrade, including interest and his costs incurred in bringing this action.
4. That, on the claims asserted in Count IV of this Complaint, this Honorable Court enter judgment for the Plaintiff Andrade against the Defendant Martins for the full amount of the damages caused to the Plaintiff Andrade, including interest and his costs incurred in bringing this action.
5. That the Defendants Brashmode, Inc. and Martins be found jointly and severally liable to the Plaintiff Andrade.

6. That this Honorable Court order such other and further relief as it deems just, equitable, or otherwise appropriate in the circumstances.

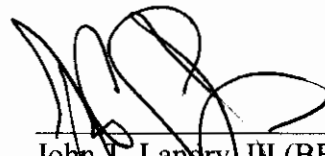
JURY CLAIM

The Plaintiff, Derek A. Andrade, demands a jury trial on all issues so triable.

Respectfully submitted,

DEREK A. ANDRADE

By his attorney,

A handwritten signature in black ink, appearing to read "John F. Landry, III", is written over a horizontal line.

John F. Landry, III (BBO No. 544388)
GLYNN, LANDRY, HARRINGTON & RICE
10 Forbes Road
Braintree, MA 02184-2605
(781) 356-1399

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained therein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Derek A. Andrade

(b) County of Residence of First Listed Plaintiff Tampa, Florida
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

John T. Landry, III, Glynn, Landry, Harrington & Rice, LLP, 10 Forbes Road, Braintree, MA 02184-2605 (781) 356-1399 x. 16

DEFENDANTS

Brashmode, Inc. and Christopher Martins

County of Residence of First Listed Defendant Bristol County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

05 - 11507 REK

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Diversity of Citizenship Jurisdiction - 28 U.S.C. s. 1332

Brief description of cause:

Premises Liability, Liquor Liability, Assault and Battery

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/14/2005

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Derek A. Andrade v. Brashmode, Inc., et al
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-893, 895, 950.
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 241, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME John T. Landry, III, Glynn, Landry, Harrington & Rice, LLPADDRESS 10 Forbes Road, Braintree, MA 02184-2605TELEPHONE NO. (781) 356-1399 x. 16